IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

LETTERS PATENT APPEAL NO. 1 OF 1997
IN
WRIT PETITION NO. 5411 OF 1996.

Maharashtra State Road
Transport Corporation .. Appellants.
Vs.
Shri Ramdas Anant Kulkarni
And another .. Respondents.

Shri G.S. Hegde with Shri C.M. Lokesh for the appellants.

Shri S.M. Dharap for the respodnents.

CORAM : F.I. REBELLO &
ANOOP V.MOHTA, JJ.

DATE : 11TH AUGUST, 2004.

ORAL JUDGMENT (PER F.I. REBELLO,J.)

. This appeal is directed against the order of learned Single Judge dated 29.11.1996, whereby the learned Judge refused to interfere with the award of the Presiding Officer, Labour Court dated 22nd March, 1996 holding that the termination of the respondent-workman was not justifiable and maintaining the order of reinstatement of the workman/second party with continuity of service and full back wages from the date of termination i.e. from 8.8.1985 till his reinstatement.

2. On behalf of the appellants, learned Counsel contends that the finding by the learned Labour Court that the allegations against the respondent/workman had not been proved is totally perverse and illegal. It is further pointed out that in paragraph 15 of order of Labour Court, Labour Court has proceeded to hold that because in the enquiry report the enquiry officer has stated that the witnesses were hostile without declaring the witnesses as hostile, that evidence should not be considered and thereafter, proceeded to hold that the charge has not been proved. The learned Industrial Court also failed to consider the evidence on record including the statement as recorded by the Inspecting Staff who were examined.

3. On the other hand on behalf of the respondent, the learned Counsel contends that the finding of the Labour Court cannot be faulted. It is pointed out that there has to be findings recorded to hold that workman was guilty of the misconduct charged. The enquiry officer had recorded the findings based on no material and as such the decree of the Labour Court cannot be faulted consequently this Court should not interfere

with the order of the Industrial Court as confirmed by the learned Single Judge in the writ. He submitted that pursuant to the order of this Court refusing to stay the order of reinstatement, the workman was reinstated.

4. After hearing the learned Counsel we find that the learned Labour Court was totally mistaken in his approach while holding that the charges against the respondent/workman were not proved. In paragraph 16 the learned Labour Court has proceeded on the footing that as witnesses examined were not declared hostile, the evidence has to be rejected. There is no finding as to whether the other evidence on record would support the charge as framed and to be proved. In the domestic enquiry there is no question of applying standards of criminal trial. Even the provisions of the Evidence Act are not applicable though they are to be taken into consideration. The approach is of fairness and compliance with the principles of natural justice and fairplay. In other words, fair opportunity has to be given to the workmen to meet the charges levelled against him and the documents to be used against the workman have to be made available to the workman, so also the witnesses to be examined, their names have to

be disclosed to the workman and opportunity must be given to the workman to cross-examine the witness. These are the basic requirements that have to be complied with in an domestic enquiry. There is no challenge on that count that these principles were not complied with. On the contrary, there is finding that the enquiry conducted was fair and proper. The evidence of the workman and his statement has been annexed and also the statement of B.K. Nikam,Reporter. On consideration of the evidence, it would be clear that when the Reporter inspected the bus, he found passengers, to be using tickets which had already been issued earlier. Respondent workman was unable to explain as to how these passengers boarded the bus. In fact the statement of six passengers were recorded by the Reporter on the site. The mere fact that the witnesses examine did not support the case would not be necessary to reject the evidence led on behalf of the appellant herein considering their earlier statement which were recorded. We find that the appellant had been able to prove the misconduct, as alleged.

5. However, considering the fact that while admitting the appeal in the year 1997, order of

reinstatement had not been stayed and as now nearly 7 years have elapsed in that regard, we are not inclined to interfere with the order directing the reinstatement. In the light of that, the following order.

. The appeal is partly allowed.

. The award of the labour court in so far as reinstatement is concerned is not interfered with. However, reinstatement will be without back wages but with continuity of service. Appeal partly allowed and disposed of accordingly.

[F.I. REBELLO, J.]

[ANOOP V. MOHTA, J.]